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MCImetro/SWBT
Interconnection Agreement

Missouri

June 16, 1997

MCImetro/SWBT INTERCONNECTION AGREEMENT

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**Missouri
MCIIm/SWBT
INTERCONNECTION AGREEMENT**

This MCIIm/SWBT Interconnection Agreement (the "Agreement"), is entered into by and between MCIImetro Access Transmission Services, Inc. ("MCIIm"), a Delaware corporation, **on behalf of itself and its Affiliates**, and Southwestern Bell Telephone Company ("SWBT"), a Missouri corporation, operating as an incumbent Local Exchange Carrier, to establish the rates, terms and conditions for interconnection, local resale, and purchase of unbundled network elements (individually referred to as the "service" or collectively as the "services").

WHEREAS, the Parties wish to interconnect their local exchange networks in a technically and economically efficient manner for the transmission and termination of calls, so that subscribers of each can seamlessly receive calls that originate on the other's network and place calls that terminate on the other's network, **and for MCIIm's use in the provision of exchange access** ("Interconnection"); and

WHEREAS, MCIIm wishes to purchase Telecommunications Services for resale to others ("Local Resale" or "Services for Resale"), and SWBT is willing to provide such service; and

WHEREAS, MCIIm wishes to purchase on an unbundled basis various network elements, ancillary services and functions and additional features, **separately or in any combination, and to use such services for itself or for the provision of its Telecommunications Services to others**, and SWBT is willing to provide such services; and

WHEREAS, the Parties intend the rates, terms and conditions of this Agreement, and their performance of obligations hereunder, to comply with the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), the Rules and Regulations of the Federal Communications Commission ("FCC"), and the orders, rules and regulations of the Missouri Public Service Commission (the "Commission");

Now, therefore, in consideration of the terms and conditions contained herein, MCIIm and SWBT hereby mutually agree as follows:

PART A -- GENERAL TERMS AND CONDITIONS

Section 1. Scope of this Agreement

1.1 This Agreement, including Parts A, B, and C, specifies the rights and obligations of each Party with respect to the purchase and sale of Interconnection, Local Resale and Network Elements. This PART A sets forth the general terms and conditions governing this Agreement. Certain terms used in this Agreement shall have the meanings defined in PART B -- DEFINITIONS, or as otherwise elsewhere defined throughout this Agreement. Other terms used but not defined herein will have the meanings ascribed to them in the Act and the FCC's Rules and Regulations in effect and implementing same. PART C sets forth, among other things, descriptions of the services, pricing, technical and business requirements, and physical and network security requirements.

LIST OF ATTACHMENTS COMPRISING PART C:

- I. Price Schedule
- II. Local Resale
- III. Network Elements
- IV. Interconnection
- V. Collocation
- VI. Rights of Way
- VII. Number Portability
- VIII. Business Process Requirements
- IX. Security Requirements
- X. Credits for Performance Standards Failures
- XI. Network Element Bona Fide Request

1.2 **SWBT shall provide the services pursuant to this Agreement. SWBT shall provide the services in any combination requested by MCIm. SWBT shall not discontinue or refuse to provide any service provided or required hereunder without MCIm's prior written agreement, nor shall SWBT reconfigure, reengineer or otherwise redeploy its network in a manner which would impair MCIm's ability to offer Telecommunications Services in the manner contemplated by this Agreement, the Act or the FCC's Rules and Regulations. SWBT agrees that all obligations undertaken pursuant to this Agreement, including without limitation, performance standards, intervals, and technical requirements are material obligations hereof and that time is of the essence. All performance standards, intervals, and technical requirements contained in this Agreement shall be met to enable MCIm to provide services and conduct its business in accordance with Missouri law.**

SWBT 1.2-1 SWBT shall provide the services addressed in this Agreement. The parties shall provide unbundled network elements in any combination desired by the requesting party. The Parties shall not discontinue or refuse to provide any service addressed hereunder except as provided in this Agreement. (Note: SWBT is submitting language on combinations of unbundled network elements due to prior legal or administrative rulings which are being challenged by SWBT. SWBT in no way concedes that an LSP may use unbundled elements to substitute for retail Telecommunications Services without paying an appropriate resale rate.)"

Section 2. Regulatory Approvals

2.1 This Agreement, and any amendment or modification hereof, will be submitted to the Commission for approval in accordance with Section 252 of the Act. In the event any governmental authority or agency rejects any provision hereof, the Parties shall negotiate promptly and in good faith such revisions as may reasonably be required to achieve approval.

2.2 Unless a different timeframe is specified herein, in the event SWBT is required by any governmental authority or agency to file a tariff or make another similar filing in connection with the performance of any action that would otherwise be governed by this Agreement, SWBT shall: (1) *provide MCI with a copy of proposed changes at least thirty (30) days in advance of such filing [Missouri Award No. 40]*; and (2) take all reasonable steps to ensure that such tariff or other filing preserves for MCI the full benefit of the rights otherwise provided in this Agreement. In no event shall SWBT voluntarily file any tariff that purports to govern the services provided hereunder that is inconsistent with the rates and other terms and conditions set forth in this Agreement to take effect during the Term of this Agreement.

SWBT 2.2-1 SWBT shall provide MCI at least 30 days notice before filing a tariff affecting prices of existing services. [Missouri Award No. 40]

2.3 In the event any governmental authority or agency orders SWBT to provide any service covered by this Agreement in accordance with any terms or conditions that individually differ from one or more corresponding terms or conditions of this Agreement, MCI may elect to amend this Agreement

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2.3 In the event any governmental authority or agency orders SWBT to provide any service covered by this Agreement in accordance with any terms or conditions that individually differ from one or more corresponding terms or conditions of this Agreement, MCIm may elect to amend this Agreement

to reflect any such differing terms or conditions contained in such decision or order, with effect from the date MCIm makes such election or upon regulatory approval, if necessary, whichever time is later. The other services covered by this Agreement and not covered by such decision or order shall remain unaffected and shall remain in full force and effect.

2.4 The Parties intend that any additional services negotiated by the Parties, added pursuant to the Bona Fide Request process or ordered by any governmental authority or court which has jurisdiction, relating to the subject matter of this Agreement will be incorporated into this Agreement by written amendment, signed by the Parties.

Section 3. Term of Agreement

This Agreement shall become binding upon approval by Missouri Public Service Commission ("Commission") and execution by the Parties ("Effective Date") and continue for a period of **three (3) years, unless earlier terminated or withdrawn in accordance with Section 20 (Termination). Renewal after the initial term for successive one-year terms shall be at MCIm's option upon written notice to SWBT prior to expiration of the current term.**

Section 4. Charges and Payment

In consideration of the services provided by SWBT under this Agreement, MCIm shall pay the charges set forth in Attachment I or as otherwise provided herein. The billing and payment procedures for charges incurred by MCIm hereunder are set forth in Attachment VIII and elsewhere, as specifically provided. Provision of any service or unbundled network elements pursuant to this Agreement shall be subject to prices ordered by the Commission or as agreed by the Parties.

Section 5. Assignment and Subcontract

5.1 Any assignment or delegation by either Party to any non-Affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. A Party assigning or delegating this Agreement or any right, obligation, duty or other interest hereunder to an Affiliate shall provide written notice to the other Party. All obligations and duties of any Party under this Agreement shall be binding on all **successors in interest and assigns** of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement.

5.2 If any obligation is performed through a subcontractor, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors, and each Party will be solely responsible for payments due the Party's subcontractors. No subcontractor will be deemed a third Party beneficiary for any purposes under this Agreement. Any subcontractor who gains access to CPNI or Confidential Information covered by this Agreement will be required by the subcontracting Party to protect such CPNI or Confidential Information to the same extent the subcontracting Party is required to protect the same under the terms of this Agreement.

Section 6. Compliance with Laws

6.1 Subject to paragraph 6.2, all terms, conditions and operations under this Agreement shall be performed in accordance with all applicable laws, regulations and judicial or regulatory decisions of all duly constituted governmental authorities with appropriate jurisdiction, and this Agreement shall be implemented consistent with, at a minimum, the FCC's First Report and Order in CC Docket No. 96-98, released August 8, 1996 (the "FCC First Interconnection Order"), the FCC's Second Report and Order in CC Docket No. 96-98, released August 8, 1996 (the "FCC Second Interconnection Order") (both such orders collectively referred to as the "FCC Interconnection Order") and the Arbitration Award by the Commission dated December 11, 1996, as amended, Case Nos. TO-97-40 and TO-97-67. Each Party shall be responsible for obtaining and keeping in effect all FCC, Commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement.

6.2 This Agreement is entered into as a result of both private negotiation between the Parties and arbitration by the Commission acting pursuant to the Act, Missouri State law, and the Commission's Substantive Rules. In the event the FCC or the Commission promulgates rules or regulations, or issues orders, or a court with appropriate jurisdiction issues orders, which make unlawful any provision of this Agreement or if the actions of Missouri or federal legislative bodies, courts, or regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws or regulations that were the basis for a provision of the contract required by the Arbitration Award approved by the Commission, the affected provision shall be invalidated, modified, or stayed as appropriate due to such action of the legislative body, court, or regulatory agency. In such event, the Parties shall expend diligent efforts to arrive at an agreement respecting the modifications to the Agreement required. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected

by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

SWBT 6.3-1 The Parties represent that they have obtained or will obtain all necessary certifications and other regulatory approvals required by any applicable Federal, State, or Local law for the provision or receipt of services referenced by this Agreement before such services are provided or received.

Section 7. Governing Law

Subject to Section 6.2, this Agreement shall be governed by and construed in accordance with the Act and the FCC's Rules and Regulations, except insofar as state law may control any aspect of this Agreement, in which case the domestic laws of the state of Missouri, without regard to its conflicts of laws principles, shall govern.

Section 8. Relationship of Parties

It is the intention of the Parties that SWBT be an independent contractor, and nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

Section 9. No Third Party Beneficiaries

The provisions of this Agreement are for the benefit of the Parties hereto and not for any other person, provided, however, that this shall not be construed to prevent MCIIm from providing its Telecommunications Services to other carriers. This Agreement shall not provide any person not a Party hereto with any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing without reference hereto.

Section 10. Intellectual Property Rights and Indemnification

10.1 Any intellectual property which originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except with respect to any licenses granted pursuant to 10.2 below, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel.

10.2 The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 11 of this Agreement.

10.3 Each Party shall and hereby agrees to defend at the other's request, indemnify, and hold harmless the other Party and each of its officers, directors, employees, and agents (each, an "Indemnatee") against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment, or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (attorneys' fees, accounting or otherwise) arising out of, resulting from, or based upon any pending or threatened claim, action, proceeding or suit by any third Party for actual infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right now known or later developed to the extent that such claim or action arises from the actions of the respective Parties, or failure to act, as required pursuant to this Agreement.

Section 11. Indemnification

11.1 Notwithstanding any limitations on remedies contained in this Agreement, each Party (the "Indemnifying Party") will indemnify and hold harmless the other Party and each of its officers, directors, employees and agents ("Indemnified Party") from and against any loss, cost, claim, liability, damage and expense (including reasonable attorney's fees) to third parties, relating to or arising out of the libel, slander, invasion of privacy, misappropriation of a name or likeness, negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement. In addition, the Indemnifying Party will, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a third party against the Indemnified Party.

11.2 For purposes of this Section 11, Section 10.3, Section 13.13, and Section 26, the Indemnified Party will notify the Indemnifying Party promptly in writing of any written claim, lawsuit, or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section 11 and tender the defense of such claim, lawsuit or demand to the Indemnifying Party. The Indemnified Party also will cooperate in every reasonable manner with the defense or settlement of

such claim, demand, or lawsuit. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the claim, demand or lawsuit. The Indemnified Party shall have the right to retain its own counsel, at its expense, and participate in but not direct the defense; provided, however, that if there are reasonable defenses in addition to those asserted by the Indemnifying Party, the Indemnified Party and its counsel may raise and direct such defenses, which shall be at the expense of the Indemnifying Party.

Section 12. Limitation of Liability

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROVISION OF SERVICE HEREUNDER. NOTWITHSTANDING THE FOREGOING LIMITATION, A PARTY'S LIABILITY SHALL NOT BE LIMITED BY THE PROVISIONS OF THIS SECTION 12 IN THE EVENT OF ITS WILLFUL OR INTENTIONAL MISCONDUCT, INCLUDING GROSS NEGLIGENCE, OR ITS REPEATED BREACH OF ANY ONE OR MORE OF ITS MATERIAL OBLIGATIONS UNDER THIS AGREEMENT. A PARTY'S LIABILITY SHALL NOT BE LIMITED WITH RESPECT TO ITS INDEMNIFICATION OBLIGATIONS.

Section 13. Warranties

13.1 Except as otherwise provided herein, each Party shall perform its obligations hereunder at a performance level no less than the highest level which it uses for its own operations, or those of its Affiliates, but in no event shall a Party use less than reasonable care in the performance of its duties hereunder.

13.2 SWBT warrants that Interconnection will be provided in a competitively neutral fashion, at any technically feasible point within its network at MCIm's request, and that such interconnection will contain all the same features, functions and capabilities, and be at least equal in quality to the highest level provided by SWBT to itself or its Affiliates. SWBT shall have the full burden of proving that a requested Interconnection Point ("IP") is not technically feasible. To the extent SWBT proves infeasibility, SWBT shall be required to provide to MCIm an alternative IP which will not impair MCIm's ability to provide its Telecommunications Services. Such alternative IP shall be technically equivalent to the requested IP and shall be subject to the same terms, conditions and price as the requested IP.

13.3 SWBT warrants that it will provide to MCIm on a nondiscriminatory basis unbundled Network Elements and ancillary services, including but not limited to local loop, subloop elements, dark fiber, local switching, tandem switching/transit switching, transport, data switching, intelligent network and advanced intelligent network, operator services, directory assistance, 911, white pages, and repair and maintenance, at any technically feasible points requested by MCIm, and all operations support systems used and useful in the preordering, ordering, provisioning, design, engineering, maintenance, repair, tracking, management, billing and any other function or functionality associated directly or indirectly with unbundled Network Elements and ancillary services. SWBT further warrants that these Network Elements and ancillary services, or their functional components, will contain all the same features, functions and capabilities and be provided at a level of quality at least equal to the highest level which it provides to itself or its Affiliates. SWBT shall have the full burden of proving that access requested by MCIm is not technically feasible. To the extent SWBT proves infeasibility, SWBT shall be required to provide to MCIm an alternative Network Element or ancillary service, which will not impair MCIm's ability to provide its Telecommunications Services. Such alternative Network Element or ancillary service shall be technically equivalent to the requested Network Element or ancillary service and shall be subject to the same terms, conditions and price as the requested Network Element or ancillary service.

13.4 SWBT warrants that it will provide to MCIm nondiscriminatory access to poles, pole attachments, ducts, innerducts, conduits, building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets, building risers, rights of way, and other pathways owned or controlled by SWBT, using capacity currently available or that can be made available pursuant to SWBT's 15-step process for handling requests as approved by the Commission. SWBT shall have the full burden of proving that such access is not technically feasible. To the extent SWBT proves infeasibility, SWBT shall be required to provide to MCIm alternative suitable access which will not impair MCIm's ability to provide its Telecommunications Services. Such alternative access shall be technically equivalent to the requested access and shall be subject to the same terms, conditions and price as the requested access. *However, both Parties shall report to the Commission six months prior to the expiration of the interconnection agreement on the effectiveness and efficiency of SWBT's methods. The Parties are encouraged to provide alternatives to the 15-step approval process within their reports. At that time, the Commission will determine if another method shall be utilized.* [Missouri Award No. 15]

13.5 SWBT warrants that it will provide to MCIm, in a competitively neutral fashion, unbundled local loops, network interface devices or units, loop distribution, digital loop carrier/analog cross connect, and loop feeders, that contain all the same features, functions, and capabilities that SWBT makes available to itself in provision of its Telecommunications Services or to its Affiliates, with at least the same quality of service, order processing, provisioning and installation, trouble resolution, maintenance, subscriber care, and billing, as the highest quality SWBT provides equivalent features, functions and capabilities to itself, its Affiliates, or its own subscribers. SWBT shall have the full burden of proving that access to the unbundled local loop or any of its unbundled components is not technically feasible. To the extent SWBT proves infeasibility, SWBT shall be required to provide to MCIm alternative suitable facilities which will not impair MCIm's ability to provide its Telecommunications Services. Such alternative facilities shall be technically equivalent to the requested facilities and subject to the same terms, conditions and price as the requested facilities.

13.6 SWBT warrants that it will provide to MCIm unbundled transport and its components, including common transport, dedicated transport, with and without electronics, and multiplexing/digital cross connect, with all the same features, functions and capabilities, and with at least the same quality level which SWBT provides to itself or its Affiliates in provision of its, or such Affiliate's, Telecommunications Services, and that such services will be provided in a competitively neutral fashion. SWBT shall have the full burden of proving that access to unbundled transport or any unbundled transport components is not technically feasible. To the extent SWBT proves infeasibility, SWBT shall be required to provide to MCIm alternative suitable facilities which will not impair MCIm's ability to provide its Telecommunications Services. Such alternative facilities shall be technically equivalent to the requested facilities and subject to the same terms, conditions and price as the requested facilities.

13.7 SWBT warrants that it will provide unbundled local switching and its functional components, including line port, trunk port, and switching capacity, including all features, functions and capabilities, and nondiscriminatory access via electronic interface to databases and associated signaling needed for call routing, call completion, and service creation, and to create and bill the communications path, all at the same or better grade of service that SWBT provides to itself or its Affiliates, unless service degradation is due to MCIm purchasing insufficient capacity to meet its own demand. SWBT further warrants that unbundled local switching and its functional components will be provided in a competitively neutral fashion. SWBT shall have the full burden of proving that access to unbundled local

switching or its functional components is not technically feasible. To the extent SWBT proves infeasibility, SWBT shall be required to provide to MCIm alternative suitable facilities which will not impair MCIm's ability to provide its Telecommunications Services. Such alternative facilities shall be technically equivalent to the requested facilities and subject to the same terms, conditions and price as the requested facilities.

13.8 SWBT warrants that it will provide nondiscriminatory access to telephone numbers.

13.9 SWBT warrants that it will provide to MCIm, in a competitively neutral fashion, interim number portability with the same features, functions and capabilities that SWBT provides to itself or its Affiliates, and with as little impairment of functioning, quality, reliability, and convenience as possible, and that it will provide such service as required by the FCC's First Report and Order in CC Docket No. 95-116, released July 2, 1996 ("Telephone Number Portability").

13.10 SWBT warrants that it will provide to MCIm, in a competitively neutral fashion, dialing parity for local exchange service and interexchange service with the same features, functions and capabilities that SWBT provides to itself or its Affiliates, and that it will provide such service as required by the FCC's Second Interconnection Order so that MCIm's subscribers experience no greater post-dial delay than similarly-situated SWBT subscribers, and are not required to dial any greater number of digits than similarly situated SWBT subscribers.

13.11 SWBT warrants that with respect to Local Resale, order entry, provisioning, installation, trouble resolution, maintenance, subscriber care, billing, and service quality will be provided at least as expeditiously as SWBT provides for itself or for its own retail local service or to others, or to its Affiliates, and that it will provide such services to MCIm in a competitively neutral fashion and at a level of quality which allows MCIm in turn to provide local resale at a level of quality equal to the highest level of quality SWBT provides for itself for its own retail Local Service or to others, or to its Affiliates. SWBT warrants further that it will impose no restrictions on MCIm's resale of these services unless specifically sanctioned by the FCC or the Commission.

13.12 SWBT warrants that it will provide on a nondiscriminatory basis space on its premises for physical or virtual collocation, as MCIm may specify, for equipment necessary for MCIm's interconnection and access to unbundled network elements.

13.13 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement shall comply with the Communications Assistance to Law Enforcement Act ("CALEA"), to the extent CALEA is effective. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities or services fully comply with CALEA.

13.14 Each Party to this Agreement warrants the accuracy and quality of its data as submitted to the respective Parties involved. Where SS7 is deployed, each Party shall pass Calling Party Number (CPN) information on each call carried over the Traffic Exchange trunks; provided the sending Party receives the CPN information and it is technically feasible to send the CPN information to the other Party.

Section 14. Notices

Except as otherwise provided herein, all notices or other communication hereunder shall be deemed to have been duly given when made in writing and delivered in person or deposited in the United States mail, certified mail, postage prepaid, return receipt requested, or delivered by prepaid overnight express mail, and addressed as follows:

To MCIIm: Terry Farmer, Director Regional Markets
MCI Telecommunications
201 Spear Street, 6th Floor
San Francisco, California 94105
Telephone Number: 415-228-1024
Facsimile number: 415-228-1134

Michelle Berkovitz, Law and Public Policy
MCI Telecommunications
8521 Leesburg Pike
Vienna, VA 22182
Telephone number: 703-918-0458
Facsimile number 703-918-6612

Copy to: General Counsel
MCI Communications Corporation
1801 Pennsylvania Ave, N.W.

Washington, D.C. 20006

To SWBT: Account Manager - CPAT
One Bell Center Plaza, Room 523
Dallas, Texas 75202
Telephone Number: 214-464-5768
Facsimile: 214-464-1486

If personal delivery is selected to give notice, a receipt of such delivery shall be obtained. Notice may also be provided by facsimile, which shall be effective on the next business day following the date of transmission. "Business Day" shall mean Monday through Friday, SWBT and MCIIm holidays excepted. The Party sending the facsimile shall have the burden of proof in proving the receipt by the recipient. The address to which notices or communications may be given to either Party may be changed by written notice given by such Party to the other pursuant to this Section 14.

Section 15. Remedies

15.1 The obligations of SWBT and the services offered under this Agreement are unique. Accordingly, in addition to any other available rights or remedies, MCIIm may sue in equity for specific performance and/or injunctive relief and SWBT expressly waives the defense that a remedy in damages would be adequate.

15.2 In the event SWBT fails to switch a subscriber to MCIIm service as requested through an MCIIm service request, within the intervals set forth in this Agreement, the continued provision of Telecommunications Services by SWBT to such subscriber shall be deemed an illegal change in subscriber carrier selection commencing with the time at which SWBT failed to switch such subscriber. In such event, SWBT shall reimburse MCIIm in an amount equal to all charges due and owing from such subscriber to SWBT for services provided from the time of such failure to switch to the time at which the subscriber switch is accomplished. This remedy shall be in addition to all other remedies available to MCIIm under this Agreement or otherwise available.

15.3 All rights of termination, cancellation or other remedies prescribed in this Agreement, or otherwise available, are cumulative and are not intended to be exclusive of other remedies to which the injured Party may be entitled at law or equity in case of any breach or threatened breach by the other Party of any provision of this Agreement. The use of one or more remedies in

this Agreement shall not bar the use of any other remedy provided for in this Agreement. **The Parties agree that the credits for performance standards failures contained in Attachment X are not inconsistent with any other remedy and are intended only to compensate MCIm, partially and immediately, for the loss in value to MCIm for SWBT's failure to meet Performance Standards.**

Section 16. Waivers

16.1 No waiver of any provisions of this Agreement and no consent to any default under this Agreement shall be effective unless the same shall be in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed.

16.2 No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.

16.3 Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

16.4 By entering into this Agreement, neither Party waives any right granted to it pursuant to the Act.

16.5 The Parties acknowledge that the terms of this Agreement were established pursuant to an order of the Commission. Any or all of the terms of this Agreement may be altered or abrogated by a successful challenge to the Agreement (or to the order approving the Agreement) as permitted by applicable law. By signing this Agreement, the Parties do not waive their right to pursue such a challenge.

Section 17. Survival

Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding Indemnification, Confidential Information, Limitation of Liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

Section 18. Force Majeure

Neither Party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its reasonable control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, cable cuts caused by a third party other than those caused by the Party claiming force majeure, its agents, employees and contractors, power blackouts, or unusually severe weather ("Force Majeure"). No delay or other failure to perform shall be excused pursuant to this Section 18 unless delay or failure and consequences thereof are beyond the reasonable control and without the fault or negligence of the Party claiming excusable delay or other failure to perform. In the event of a cable cut of a cable owned or controlled by the Party claiming the force majeure, such Party may only claim force majeure for the reasonable time period required to repair the cable cut or reroute traffic. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay. In the event of such delay, the Party claiming Force Majeure shall perform its obligations at a performance level no less than that which it uses for its own operations. In the event of such performance delay or failure by SWBT, SWBT agrees to resume performance in a nondiscriminatory manner and not favor its own provision of Telecommunications Services above that of MCIm.

Section 19. Section 252(i) Obligations.

If SWBT enters into an agreement (an "Other Agreement"), approved by the Commission pursuant to Section 252 of the Act, to provide any Interconnection, Resale or Network Elements covered in an interconnection agreement within the State of Missouri to another requesting Telecommunications Carrier, including its Affiliate, SWBT shall make available to MCIm such Interconnection, Resale or Network Elements upon the same rates, terms and conditions as those provided in

the Other Agreement. At its sole option, upon written notice, MCIm may avail itself of either: (1) the Other Agreement in its entirety; or (2) the prices, terms and conditions of any of the following individual Interconnection, Resale or Network Elements contained in such Other Agreement, including, but not limited to, any of the following:

- (1) Interconnection - Section 251(c)(2) of the Act; or
- (2) Exchange Access - Section 251(c)(2) of the Act; or
- (3) Unbundled Access - Local Loops - Section 251(c)(3) of the Act;
or
- (4) Unbundled Access - Network Interface Device - Section 251(c)(3) of the Act; or
- (5) Unbundled Access - Switching Capability - Section 251(c)(3) of the Act; or
- (6) Unbundled Access - Interoffice Transmission Facilities - Section 251(c)(3) of the Act; or
- (7) Unbundled Access - Signaling Links and Call-Related Databases - Section 251(c)(3) of the Act; or
- (8) Unbundled Access - Operations Support Systems Functions - Section 251(c)(3) of the Act; or
- (9) Unbundled Access - Operator Services and Directory Assistance - Section 251(c)(3) of the Act; or
- (10) Resale - Section 251(c)(4) of the Act; or
- (11) Collocation - Section 251(c)(6) of the Act; or
- (12) Number Portability - Section 251(b)(2) of the Act; or
- (13) White Pages - Section 251(b)(3) of the Act; or
- (14) Access to Rights of Way - Section 251(b)(4) of the Act; or
- (15) Cellular Traffic; or

(16) LSV/BLI Traffic.

Upon MCIm's election to adopt either: (1) the Other agreement in its entirety; or, (2) the prices, terms and conditions of any of the above Interconnection, Resale or Network Elements, the Parties shall amend this Agreement to reflect such applicable terms within thirty (30) days after SWBT's receipt of notice specifying such election.

Notwithstanding the foregoing, MCIm may not avail itself of any of the arrangements in the Other Agreement if SWBT demonstrates to the Commission that it would incur greater cost to provide such arrangement to MCIm than SWBT incurs to provide such arrangement to the Telecommunications Carrier that is a Party to the Other Agreement.

Section 20. Termination

20.1 In the event of breach of any material provision of this Agreement by either Party, upon the non-breaching Party giving the other Party written notice as provided in Section 14 thereof:

20.1.1 If such material breach is for non-payment of amounts due hereunder, the breaching Party shall cure such breach within thirty (30) days of receiving such notice. The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach. **Amounts disputed in good faith and withheld or set off shall not be deemed "amounts due hereunder" for the purpose of this provision.**

20.1.2 If such material breach is for any failure to perform in accordance with this Agreement, which, in the sole judgment of the non-breaching Party, adversely affects the non-breaching Party's subscribers, the non-breaching Party shall give notice of such adverse effects and the breaching Party shall cure such breach within ten (10) days or within a period of time equivalent to the applicable interval required for such performance by this Agreement, whichever is shorter, and if the breaching Party does not, the non-breaching Party may, at its sole option, terminate this Agreement, or any parts hereof. **Subject to Section 12, the non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach.** Notice of a breach under this Subsection 20.1.2 may be given electronically or by facsimile and in such case shall be deemed received when sent.

20.1.3 If such material breach is for any other failure to perform in accordance with this Agreement, the breaching Party shall cure such breach to the non-breaching Party's reasonable satisfaction within forty-five (45) days, and if it does not, the non-breaching Party may, at its sole option terminate this Agreement, or any parts hereof. **The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach, subject to Section 12.**

20.2 Subject to Section 17 and except as otherwise provided herein, MCIm may terminate this Agreement in whole or in part at any time for any reason upon sixty (60) days prior written notice, except with respect to termination of any particular service(s), in which case, upon thirty (30) days prior written notice.

20.3 Upon termination or expiration of this Agreement:

- (A) each Party shall continue to comply with their obligations to maintain confidentiality pursuant to the terms of this Agreement; and
- (B) each Party shall promptly pay all amounts due for services provided up to the date of termination
- (C) each Party's indemnification obligations, arising out of this Agreement shall survive.

20.4 In the event of any termination under this Section 20 or the expiration of this Agreement, the Parties shall negotiate reasonable terms to provide for an uninterrupted transition of services to MCIm or another vendor **designated by MCIm.**

20.5 Notwithstanding any termination hereof, the Parties shall continue to comply with their obligations under the Act to provide and compensate one another in accordance with this Agreement for interconnection.

Section 21. Confidentiality and Publicity

21.1 All confidential or proprietary information disclosed by either Party during the negotiations and the term of this Agreement shall be protected by the Parties in accordance with the terms of this Section 21. All information which is disclosed by one Party ("Disclosing Party") to the other ("Recipient") in connection with this Agreement, or acquired in the course of performance of this Agreement, shall be deemed confidential and proprietary to the Disclosing Party and subject to this Agreement, such information including but not limited to, orders for services, usage information in any form, and Subscriber Proprietary Network Information ("CPNI") as that term is defined by the Act and the rules and regulations of the FCC ("Confidential Information").

21.1.1 For a period of ten (10) years from receipt of Confidential Information, Recipient shall: (1) use it only for the purpose of performing under this Agreement; (2) hold it in confidence and disclose it only to employees who have a need to know it in order to perform under this Agreement; and, (3) safeguard it from unauthorized use or Disclosure using no less than the degree of care with which Recipient safeguards its own Confidential Information. Recipient must obtain written authorization from Disclosing Party before any discussion of Confidential Information with any third party agent, contractor or consultant, unless such third party has executed a written agreement comparable in scope to the terms of this Section 21.

21.1.2 Recipient shall have no obligation to safeguard Confidential Information: (1) which was in the Recipient's possession free of restriction prior to its receipt from Disclosing Party; (2) which becomes publicly known or available or otherwise known to Recipient through no breach of this Agreement by Recipient; (3) which is rightfully acquired by Recipient free of restrictions on its Disclosure; or, (4) which is independently developed by personnel of Recipient to whom the Disclosing Party's Confidential Information had not been previously disclosed. Either Party shall have the right to disclose Confidential Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any mediation, arbitration, approval or appeal of this Agreement. Recipient may disclose Confidential Information if required by law, a court, or governmental agency, provided that Disclosing Party has been notified of the requirement promptly after Recipient becomes aware of the requirement, and provided that Recipient undertakes all lawful measures to avoid disclosing such information until Disclosing Party has had reasonable time to obtain a protective order. Recipient agrees to comply with any protective order that covers the Confidential Information to be disclosed.

21.1.3 Each Party agrees that Disclosing Party would be irreparably injured by a breach of this Section 21 by Recipient or its representatives and that Disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of this Section 21. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.

21.2 CPNI related to MCIIm's subscribers obtained by virtue of Interconnection or any other service provided under this Agreement shall be MCIIm's proprietary information and may not be used by SWBT for any purpose except performance